

Third District Court of Appeal

State of Florida

Opinion filed May 3, 2023.
Not final until disposition of timely filed motion for rehearing.

Nos. 3D22-624, 3D22-625
Lower Tribunal No. 21-24767

José Yeyille,
Appellant,

vs.

Justin Cole Spiegel, M.D.,
Appellee.

Appeals from the Circuit Court for Miami-Dade County, Valerie R. Manno Schurr, Judge.

José Yeyille, in proper person.

Diaz Law Group, and Rolando A. Diaz; Hicks, Porter, Ebenfeld & Stein, P.A., Dinah S. Stein and Aneta McCleary, for appellee.

Before FERNANDEZ, C.J., and HENDON and GORDO, JJ.

PER CURIAM.

INTRODUCTION

José Yeyille, a pro se Appellant and member of the Florida Bar, filed a motion for rehearing and motion for written opinion in this appeal. Based upon that motion, and Appellee Justin Cole Speigel, M.D.,’s, later filed motion for sanctions, this Court issued a Clerk’s Order directing Mr. Yeyille to show cause why he should not be subject to sanctions and barred from further pro se filings for violating the Florida Rules of Appellate Procedure and the Rules Regulating the Florida Bar. In response, Mr. Yeyille requested a more detailed order. Accordingly, the Court withdraws its prior Clerk’s Order and issues the following order in its stead:

ORDER TO SHOW CAUSE

This Court, upon a motion for sanctions by Appellee Justin Cole Speigel, M.D., and pursuant to Florida Rule of Appellate Procedure 9.410(a), hereby directs José Yeyille to show cause why sanctions should not be imposed upon him for filing his “Motions for Written Opinion Pursuant to Fla. R. App. P. 9.330(a)(2)(D) In Lieu et Place of this Court’s Per Curiam Affirmance Without Opinion (PCA) Order of February 22, 2023; and Motion for Rehearing Pursuant to Fla. R. App. P. 9.330(a)(2)(A)” (“Motion for Rehearing”), which appears to violate the Florida Rules of Appellate Procedure and Rules Regulating the Florida Bar in the following manner:

1. In his motion, Mr. Yeyille contends rehearing is warranted because this Court's opinion overrules prior precedent and improperly declined to hear his constitutional claims. Pursuant to Florida Rule of Appellate Procedure 9.330(a)(2)(A), "[a] motion for rehearing shall state with particularity the points of law or fact that, in the opinion of the movant, the court has overlooked or misapprehended in its order or decision. The motion shall not present issues not previously raised in the proceeding." Mr. Yeyille, however, fails to show how this Court's per curiam affirmance conflicts with prior precedent or violated any of his constitutional rights. Mr. Yeyille cites to various case law—the overwhelming majority of which was already cited in his briefs—but does not “state with particularity” how this Court's opinion conflicts with any of that precedent. Mr. Yeyille also merely reasserts the arguments raised in his briefs. A motion for rehearing is not “an open invitation for an unhappy litigant or attorney to reargue the same points previously presented, or to discuss the bottomless depth of the displeasure that one might feel toward this judicial body as a result of having unsuccessfully sought appellate relief.” Ayala v. Gonzalez, 984 So. 2d 523, 526 (Fla. 5th DCA 2008); see also Jedak Corp. v. Seabreeze Off. Assocs., LLC, 248 So. 3d 242, 244 n.1 (Fla. 5th DCA 2018) (denying a motion for rehearing where “the motion expressed disagreement with the opinion, [but]

failed to identify any ambiguity necessitating clarification”); Sherwood v. State, 111 So. 2d 96, 98 (Fla. 3d DCA 1959) (holding that a motion for rehearing may not be used as a means to reargue points involved in the case or to raise grounds other than those previously relied on in the appeal). Additionally, “a citizen . . . abuses the right to pro se access by filing repetitious and frivolous pleadings, thereby diminishing the ability of the courts to devote their finite resources to the consideration of legitimate claims.” State v. Spencer, 751 So. 2d 47, 48 (Fla. 1999).

2. Mr. Yeyille also asserts the Court should issue a written opinion “to provide an explanation for its clear deviation from prior binding precedents set by the Florida Supreme Court and all district courts of appeal including this Court.” Florida Rule of Appellate Procedure 9.330(a)(2)(D)(ii) provides that “[a] motion for written opinion shall set forth the reasons that the party believes that a written opinion would provide: . . . (ii) an explanation for an apparent deviation from prior precedent.” As stated above, however, Mr. Yeyille fails to even assert how this Court’s opinion conflicts with or deviates from prior precedent.

3. In his motion, Mr. Yeyille, a licensed Florida attorney, impugns and disparages the judges of this Court and a judge of the circuit court. Rule 4-8.2(a) of the Rules Regulating the Florida Bar provides in pertinent part: “A

lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge . . .” Every lawyer admitted to the Florida Bar has sworn to “maintain the respect due to courts of justice and judicial officers” and to “abstain from all offensive personality.” Even attorneys acting in a pro se capacity are required to comply with the Rules Regulating the Florida Bar. See R. Regulating Fla. Bar 4-8.4(a) (“A lawyer shall not: (a) violate or attempt to violate the Rules of Professional Conduct.”); The Florida Bar v. Marcellus, 249 So. 3d 538, 543 (Fla. 2018) (suspending an attorney for violation Fla. Bar Rules 4-3.4(a), 4-3.4(c), 4-3.4(d), and 4-8.4(c), for refusing to respond to pending discovery requests when he was proceeding pro se and when he was represented by counsel); The Florida Bar v. Weinberger, 397 So. 2d 661, 662 (Fla. 1981) (publicly reprimanding an attorney for violating the Rules of Professional Conduct where he filed various pleadings and made public statements denigrating the courts and the administration of justice in two civil suits where he represented himself). “[E]thical rules that prohibit attorneys from making statements impugning the integrity of judges are not to protect judges from unpleasant or unsavory criticism. Rather, such rules are designed to preserve public confidence in the fairness and impartiality of our system of justice.” The Florida Bar v. Ray, 797 So. 2d 556, 558–59 (Fla.

2001). “Although attorneys play an important role in exposing valid problems within the judicial system, statements impugning the integrity of a judge, when made with reckless disregard as to their truth or falsity, erode public confidence in the judicial system without assisting to publicize problems that legitimately deserve attention.” Bank of Am., N.A. v. Atkin, 305 So. 3d 305, 307 (Fla. 3d DCA 2018) (quoting Ray, 797 So. 2d at 560). Mr. Yeyille impugns and disparages the judges of this Court, and a judge of the circuit court, without basis, advancing no relevant position and serving no apparent purpose other than to malign or impugn the integrity of the judges, in filing his Motion for Rehearing containing the following statements:

1. “Are appellate judge, Ivan Fernandez, Eric Hendon, Monica Gordo and trial judge Valerie Manno-Schurr the dumbest twats ever to adorn a bench?”
2. “Are Ivan Fernandez, Eric Hendon, Monica Gordo and Valerie Manno-Schurr bigger scumbags then doctor Justin Cole Speigel and nurse Arturo Pena?”
3. “Are Ivan Fernandez, Eric Hendon, Monica Gordo and Valerie Manno-Schurr just dumb scumbags?”
4. “Appellant contends that where a trial judge cannot be arsed to write an opinion or explanation, the appellate judges must do so.”

5. Mr. Yeyille also, without providing any legal or factual basis in support, accuses the circuit court judge and this Court of violating his constitutional rights:

- a. "In issuing orders without opinions the trial court and this court violated Appellant's constitutional rights."
- b. "It does not concern Appellant that a trial judge's neglect to write an opinion renders appellate court judges of the third district court of appeal her personal secretaries or law clerks."
- c. Asserting that the circuit court judge's notice of cancellation of a hearing was "clear evidence of judicial misconduct, obstruction of justice, and a criminal act."
- d. Accusing the circuit court judge of "factually and objectively" violating his "access to courts, due process, and equal protection rights."
- e. "In denying Appellant's Motion to Relinquish Jurisdiction to [the circuit court judge] to allow her the chance to cure her criminal acts and omissions, this court approved them . . . and joined her in violating Appellant's constitutional rights attempting to hide it under the bench with a per curiam affirmance without opinion."

“As we have noted previously, such frivolous implications, made without basis, advancing no relevant position and serving no other apparent purpose but to malign or impugn the integrity of a judge or judges, appear to violate Rule Regulating the Florida Bar 4-8.2(a).” Buset v. HSBC Bank USA, Nat’l Ass’n, 344 So. 3d 493, 495–96 (Fla. 3d DCA 2022).

CONCLUSION

WHEREFORE, José Yeyille, is hereby ordered to show cause within fifteen (15) days from the date of this order, why this Court should not impose sanctions and bar him from further pro se filings pursuant to State v. Spencer, 751 So. 2d 47 (Fla. 1999) for violation of the Florida Rules of Appellate Procedure and Rules Regulating the Florida Bar. As provided by rule 9.410(a), such sanctions may include reprimand, contempt, striking of briefs or pleadings, dismissal of proceedings, costs, attorneys’ fees, or other sanctions.